

Claypool v. Blue Dolphin Charters

Report of Patrick F. Kennedy, Ph.D.

February 21, 2006

I. Introduction:

6 1. I was retained by counsel for Mr. Dennis Claypool to evaluate the loss
7 of income to Mr. Claypool associated with the incident on July 20, 2004. The purpose of
8 this report is to disclose my expert opinions regarding Mr. Claypool's economic loss to
9 the parties and the Court in accordance with Federal Court Rule 26(a)(2)(B). This report
10 summarizes my opinions given information available to me at this time. If I receive
11 additional information relevant to Mr. Claypool's claimed economic loss, I will file a
12 supplemental economic loss report to complete my analysis and opinion. If necessary, I
13 will also respond to defendant's retained damages expert's loss analysis.

II. Professional Background and Experience:

16 2. I am an economist and Shareholder with Mack | Barclay Inc. I hold a
17 bachelor's degree in economics from the University of California, San Diego and a
18 doctorate in economics from Stanford University. My professional experience includes
19 many economic loss analysis projects within and outside of the litigation environment.
20 Specifically, I have calculated economic losses in a number of matters involving
21 wrongful death claims and personal injury claims. My curriculum vita, which
22 summarizes my professional and educational background, is attached at Exhibit "A."

24 3. Attached at Exhibit "B" is a list of my deposition, arbitration and trial
25 testimony for the past four years. My rate for analysis and testimony is \$350 per hour.
26 Other professionals in my office who have worked on this matter have billing rates of
27 \$210 per hour.

1 **III. Materials Subject to Review:**

2 4. In connection with my continuing review and analysis I have obtained
3 materials and information summarized at the attached Exhibit "C."

4

5 **IV. Economic Loss Analysis:**

6 5. Based on the information provided to me at this time, I have
7 determined that Mr. Claypool's past and future economic loss, expressed in present
8 cash value and adjusted for income taxes, is between approximately \$910,450 and
9 \$1,202,147. A summary of my analysis is attached at Exhibit "D."

10 6. The range of damages is based on two alternatives for Mr. Claypool's
11 earnings "but-for" his injury.

12

13 **But-For Earnings Basis – Historical Earnings:**

14 7. At the time of the incident on July 20, 2004, Mr. Claypool was
15 employed as an insurance salesman for Prudential Insurance. His annualized gross
16 earnings were \$151,842 in 2004. His gross earnings were reduced for business expenses,
17 including the salary of his assistant, utilities, office expenses, postage, and other
18 expenses to arrive at net income. His projected net income for 2004 was \$78,654 after
19 deducting the above-referenced business expenses. His but-for net income for 2005 and
20 2006 was increased using actual and projected increases in the Employment Cost Index
21 for Insurance & Real Estate and the Consumer Price Index. His projected net income is
22 \$79,867 for 2005, and \$81,167 for 2006.

23 8. As an employee of Prudential Insurance, Mr. Claypool was entitled to
24 a 3% match on his contributions to 401k. I have included, as an additional component
25 of damages, 3% of the projected gross earnings in each alternative.

26

27 **But-For Earnings Basis – Additional Growth:**

28 9. I am informed by Mr. Claypool that he had planned a significant

1 marketing effort to acquire new business at the time of the incident. Based on past
2 experience in new business generation efforts, he estimates that his annual gross income
3 would have increased by approximately \$40,000 to \$60,000. In order to achieve the
4 higher annual income from new business, he would have incurred additional annual
5 advertising expenses of approximately \$15,000 to \$20,000. Mr. Claypool's resulting
6 projected net income with the additional advertising efforts would have been \$105,028,
7 in 2004 dollars. Projected net income for 2005 would be \$107,354 and \$109,716 in 2006.
8 Mr. Claypool asserts that, due to the injury, he no longer has the capacity to
9 accommodate the additional business activity.

10

11 **Offset Earnings Basis:**

12 10. Mr. Claypool returned to work on February 11, 2005, approximately
13 seven months after the injury. During his absence from work, he was unable to service
14 his existing book of business. After his return to work he was able to partially mitigate
15 his losses through renewal business from a portion of his pre-injury book of business.
16 Through December 31, 2005, Mr. Claypool earned gross wages of \$98,094. After
17 deducting business expenses, his net income for the 2005 was \$36,283. Future annual
18 offset earnings were projected based on his average weekly income for the portion of
19 2005 that he was able to work. His projected net income for the full year 2006 is \$51,924.
20 I included a 3% of gross income 401k match as an additional offset to damages.

21

11. All income is adjusted for federal, state and Social Security taxes. The
22 figures presented in my summary of damages are net of the impact of all of these taxes.
23

24

12 **Period of loss:**

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12. Loss of income and benefits and offset income and benefits are
26 calculated from the date of injury, July 20, 2004, through Mr. Claypool's statistical
27 worklife expectancy at July 24, 2018 when he is age 64.62.
28

1 **Additional Expenses – Rental Properties:**

2 13. At the time of the incident, Mr. Claypool owned three rental
3 properties. Due to his injury, he has been unable to perform the normal maintenance
4 and repairs that the properties have required and has had to pay for outside labor
5 services. In addition, he has provided one of his tenants with a \$400 per month rent
6 concession as compensation for helping with maintenance and repairs. Total out of
7 pocket expenses incurred between July 20, 2004 and March 1, 2006 is \$25,495. As of
8 March 1, 2006 future annual additional expenses are estimated at \$15,000 per year.

9 I am informed that Mr. Claypool planned to keep the rental properties as long
10 as possible. I have projected a loss of these additional expenses through Mr. Claypool's
11 full-functional life expectancy at November 23, 2029 when he is age 75.96.

12

13 **Future Care Costs:**

14 14. According to Dr. Duncan, Mr. Claypool's treating physician, he will
15 require additional surgeries over the next 2 years. The global expenses for all future
16 treatments are \$125,000. He will also require 2-3 visits per year for follow-up treatment
17 of his injury. Dr. Duncan estimates this ongoing treatment at \$725 in additional
18 expenses per year.

19 I have calculated the additional surgeries over the next two years. I have
20 calculated the additional expense of office visits through Mr. Claypool's statistical life
21 expectancy at October 14, 2032 when he is age 78.85.

22

23 **Household Services:**

24 15. The final component of damages is the loss of household services
25 suffered by Mr. Claypool as a result of his injury. Per Mr. Claypool, he has incurred out
26 of pocket expenses for a sprinkler system, a salt system, lawn maintenance and pool
27 maintenance. In addition, I estimated that he has lost the capacity to perform 10 hours
28 of household services per week, 50 weeks per year. I projected a loss of household

1 services through Mr. Claypool's full-functional life expectancy at November 23, 2029
2 when he is age 75.96.

3

4 V. **Net Discount Rate:**

5 16. From the date of the injury, July 20, 2004, through March 1, 2006, I
6 discounted all components of damages back to the date of injury at a net discount rate
7 of 3.31 percent. That rate represents a tax-adjusted average return on 5-year US
8 Treasury securities.

9 17. For the period from March 1, 2006 forward, I applied a tax-adjusted
10 net discount rate of 2.0 percent to reduce Mr. Claypool's projected future loss of income
11 and benefits, and his offset income and benefits. I arrived at a net discount rate of 2
12 percent by comparing average tax-adjusted yields on intermediate-term U.S. Treasury
13 Notes to average historical wage growth, inflation, wage and interest rate data. The
14 projected net discount rate also accounts for the time period of loss in this case.

15 18. I applied a tax-adjusted net discount rate of 3.0 percent to reduce
16 projected future additional rental property expenses and loss of household services to
17 present cash value. I arrived at a net discount rate of 3.0 percent by comparing average
18 tax-adjusted yields on intermediate-term U.S. Treasury Notes to inflation and interest
19 rate data. The projected net discount rate also accounts for the time period of loss in
20 this case.

21 19. I applied a tax-adjusted net discount rate of -1.0 percent to reduce
22 projected future surgery costs to present cash. I arrived at a net discount rate of -1.0
23 percent by comparing tax-adjusted average yields on intermediate-term US Treasury
24 securities to average historical medical care cost growth, inflation and interest rate data.
25 I applied a tax-adjusted net discount rate of 1.75 percent to reduce projected future
26 medical office visits to present cash value. I arrived at a net discount rate of 1.75
27 percent by comparing the average yields on intermediate-term US Treasury securities to
28 average historical medical care cost growth, inflation and interest rate data. The

1 projected net discount rates also accounts for the time period of loss in this case.

2

3 VI. **Pre-Judgment Interest:**

4 20. I have calculated pre-judgment interest on all components of damages
5 from the date of the injury on July 20, 2004 through March 1, 2006. The pre-judgment
6 interest was calculated at the statutory rate of 7%.

7

8 VII. **Conclusion:**

9 18. It is my opinion that the economic damages suffered by Mr. Claypool
10 as a result of his injury on July 20, 2004, stated in present cash value and adjusted for
11 the impact of income taxes, range from \$910,450 to \$1,202,147.

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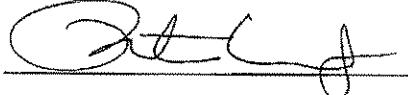
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1 I declare under penalty of perjury under the law of the United States of
2 America and the State of California that the foregoing is true and correct to the best of
3 my belief and that this report was signed on February 21, 2006 at San Diego, California.
4

5 MACK|BARCLAY INC.

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8 Patrick F. Kennedy, Ph.D.
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EXHIBIT A



MACK|BARCLAY INC.

PATRICK F. KENNEDY, PH.D.

SHAREHOLDER

CARY P. MACK
JD, CPA, CFE

CHRISTOPHER R. BARCLAY
MA, CPA, CIRA, ASA

PATRICK F. KENNEDY
PH.D.

MICHAEL R. BANDEMER
CPA, CMA, CITP, EnCE

Laura Fuchs Dolan
MBA

BRIAN J. BERGMARK
MBA, CPA, ABV, ASA

STACY ELEDGE CHIANG
CPA, CIRA

HEATHER H. XITCO
MBA, CPA

PROFESSIONAL RESPONSIBILITIES:

Provides research, consultation, and opinions in business and dispute contexts including discovery assistance, causation analysis, damage quantification analysis, and testimony. Engagements also include economic impact reports, budget/program review, and financial analysis for public and private entities.

PROFESSIONAL EXPERIENCE:

Mack|Barclay Inc. - Shareholder (1996 - Present)

International Securities Group, Inc. - Director of Economic Research (1995 - 1996)

Board of Governors of the Federal Reserve System, Washington, D.C. - Economist (1992 - 1995)

EDUCATION:

Stanford University, Doctorate in Economics (1992):

Awarded Stanford University Fellowship, Bradley Foundation Dissertation Fellowship, and Outstanding Teaching Award.

University of California, San Diego, Bachelor of Arts in Economics (1986):

Summa Cum Laude graduate. Recipient of various awards including UC Regents Scholarship, Muir College Valedictorian, Phi Beta Kappa, and the Seymour E. Harris Economics Award.

Recipient of the Federal Reserve Board's Cash Award merit Program for economic analysis conducted for Vice-Chairman Alan Blinder.

MEMBERSHIP IN PROFESSIONAL ASSOCIATIONS:

American Economic Association

National Association for Business Economics

National Association for Forensic Economics

Registered Securities Representative and Registered Principal (NASD Series 7, 24 and 63 - currently inactive)

Licensing Executive Society

— CERTIFIED PUBLIC ACCOUNTANTS, ECONOMISTS & TECHNOLOGY CONSULTANTS —

SAN DIEGO OFFICE

EMERALD PLAZA
402 WEST BROADWAY, NINTH FLOOR
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ORANGE COUNTY OFFICE

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EXHIBIT B

Patrick F. Kennedy, Ph.D.

Deposition, Mediation, Arbitration and Trial Testimony

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Date	Case Name	Venue	Testimony
02/17/06	National Union v. SDI	LA Superior	Deposition
02/15/06	Puentes v. Wells Fargo Home Loans	SD Superior	Declaration
02/03/06	Art Attacks Ink v. MGA Entertainment	Federal Court	Deposition
01/11/06	Phoenix Logistics v. EDO RSS	Arbitration	Arbitration
12/29/05	Sprang v. College Loan Corporation	SD Superior	Deposition
12/09/05	Art Attacks Ink v. MGA Entertainment	Federal Court	Report
12/06/05	Fechtig v. Sea Pacific	Federal Court	Trial
11/14/05	Art Attacks Ink v. MGA Entertainment	SD Superior	Report
11/02/05	Marriage of Ricci	SD Superior	Declaration
11/01/05	George Yardley Co. v. Johnson Controls	Arbitration	Trial
10/31/05	Cortez v. Pool Well Services Company	LA Superior	Trial
10/28/05	PS Investments v. Tuchscher Devel. Enterprises	Riverside Superior	Deposition
10/27/05	Kalianov v. Dept. of Health & Human Svcs.	Federal Court	Report
10/26/05	Brown v. Dept. of Health & Human Svcs.	Federal Court	Report
10/25/05	George Yardley Co. v. Johnson Controls	Arbitration	Deposition
10/18/05	Phoenix Logistics v. EDO RSS	Arbitration	Deposition
10/17/05	Phoenix Logistics v. EDO RSS	Arbitration	Report
10/11/05	Miller v. Collectors Universe	SD Superior	Deposition
10/10/05	Cortez v. Pool Well Services Company	OC Superior	Deposition
10/10/05	Kuderna v. State Farm	SD Superior	Deposition
10/07/05	George Yardley Co. v. Johnson Controls	Arbitration	Report
10/07/05	Zimmer Dental v. Niznick	Arbitration	Arbitration
09/15/05	Zimmer Dental v. Niznick	SD Superior	Deposition
09/01/05	NOS Communications v. Sprint	LA Superior	Declaration
08/26/05	Butler, Robinson, et al. v. Bell Helicopter	LA Superior	Deposition
08/22/05	Zimmer Dental v. Niznick	Arbitration	Report
08/22/05	NOS Communications v. Sprint	LA Superior	Declaration
08/19/05	Phoenix Logistics v. EDO RSS	Arbitration	Report
08/18/05	Fechtig v. Sea Pacific	Federal Court	Report
08/12/05	National Union v. SDI	LA Superior	Deposition
07/19/05	Yates v. Kahikolu, Ltd.	Hawaii Superior	Report
06/17/05	Sinoti v. F/V Cape Elizabeth	Federal Court	Report
06/17/05	Fierro v. Chase Manhattan	SD Superior	Declaration
06/16/05	NNWS, Inc. v. Hughes Network Systems, Inc.	SD Superior	Trial
05/27/05	Yates v. Kahikolu, Ltd.	Hawaii Superior	Report
05/26/05	Cherebin v. Tradition Mariner, Inc.	Federal Court	Report
05/18/05	Sellars v. Manson Construction	Long Beach Superior	Deposition
05/12/05	Fire Insurance Exchange v. Braun	SD Superior	Deposition
04/29/05	NOS Communications v. Sprint	LA Superior	Trial
04/27/05	Tapuolo v. Cape Elizabeth	Federal Court	Report
04/27/05	Carvache v. Cape Breton	Federal Court	Report
04/26/05	NOS Communications v. Sprint	LA Superior	Deposition
04/25/05	Poundris v. Allstate Cellular	SD Superior	Trial

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Date	Case Name	Venue	Testimony
04/22/05	NNWS, Inc. v. Hughes Network Systems, Inc.	SD Superior	Deposition
04/22/05	Brown v. Dept. of Health & Human Svcs.	Federal Court	Report
04/21/05	Sortor v. The Lincoln Company	Utah Superior	Report
04/12/05	NOS Communications v. Sprint	LA Superior	Deposition
04/08/05	Tri/Sam Development v. Wohn	LA Superior	Trial
03/31/05	Poundris v. Allstate Cellular	SD Superior	Deposition
03/30/05	Wiley v. Dept. of Health & Human Svcs.	Federal Court	Report
03/21/05	Brown v. Dept. of Health & Human Svcs.	Federal Court	Hearing
03/04/05	ASAT Holdings v. Motorola, Inc.	Federal Court	Report
02/17/05	Jordan Insurance v. Hjortnaes	San Bernardino Superior	Deposition
02/03/05	California Splendor, Inc. v. Ropak Corp.	SD Superior	Declaration
01/31/05	Cherebin v. Tradition Mariner, Inc.	Federal Court	Report
01/25/05	Real Legends v. When It Was A Game	SD Superior	Trial
01/24/05	Brown v. Dept. of Health & Human Svcs.	Federal Court	Declaration
01/10/05	Barlin v. Predicate Logic	SD Superior	Deposition
12/15/04	Real Legends v. When It Was A Game	SD Superior	Deposition
12/15/04	Wiley v. Dept. of Health & Human Svcs.	Federal Court	Report
11/18/04	Yardley v. Johnson Controls	SD Superior	Report
11/18/04	Saehan Media America, Inc. v. KNH-21, Inc.	SD Superior	Deposition
11/17/04	Mani v. Qualmag, Inc.	SD Superior	Trial
11/03/04	Mani v. Qualmag, Inc.	SD Superior	Trial
10/25/04	Dickson v. Dwight	Arbitration	Arbitration
10/22/04	Mani v. Qualmag, Inc.	SD Superior	Deposition
10/21/04	Real Legends v. When It Was A Game	SD Superior	Declaration
10/18/04	Adkins v. Washington Mutual Bank	SD Superior	Deposition
10/08/04	Talk-To-Dealers.com v. LivePerson.com	Orange County Superior	Declaration
10/05/04	Reager v. First Union Securities, Inc.	Arbitration	Arbitration
10/01/04	Adkins v. Washington Mutual Bank	SD Superior	Declaration
09/16/04	QR Spex v. Motorola	Federal Court	Report
08/23/04	Graphic Communications v. Grande Foods	LA Superior	Deposition
08/23/04	QR Spex v. Motorola	Federal Court	Report
08/19/04	Real Legends v. When It Was A Game	SD Superior	Declaration
08/11/04	The Retirement Grp. v. LINSO/Private Ledger	SD Superior	Trial
07/22/04	Rankin v. Applause, LLC	SD Superior	Declaration
07/16/04	Furman v. Interinsurance Exchange	Arbitration	Deposition
07/15/04	In Re: Hauser, Inc.	Bankruptcy Court	Report
07/09/04	Scheuring v. Trailor Brothers, Inc.	Federal Court	Report
07/08/04	Luis Salinas v. S/V Jeannine	Federal Court	Deposition
07/08/04	Roberto Salinas v. Tri Marine	Federal Court	Deposition
07/07/04	Rankin v. Applause, LLC	SD Superior	Declaration
07/01/04	Barnes v. Connolly-Pacific Company	Federal Court	Trial
06/22/04	Mani v. Qualmag, Inc.	SD Superior	Deposition
06/11/04	Roberto Salinas v. Tri Marine	Federal Court	Report



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Date	Case Name	Venue	Testimony
06/08/04	Reager v. First Union Securities, Inc.	Arbitration	Report
06/03/04	Jeffries v. Dept. of Health & Human Svcs.	Federal Court	Report
05/27/04	Luis Salinas v. S/V Jeannine	Federal Court	Report
05/25/04	Wickersham v. Manson Construction Co.	Federal Court	Trial
05/24/04	Neichin v. Interinsurance Exchange	Arbitration	Deposition
05/19/04	Father Joe's Villages v. Road One	Arbitration	Arbitration
05/17/04	Father Joe's Villages v. Road One	Arbitration	Arbitration
04/28/04	Annett v. EuroDesign Cabinets, Inc.	SD Superior	Declaration
04/26/04	Mancinelli v. Siewak	SD Superior	Trial
04/14/04	Game World v. Olhausen Billiard Mfg.	Federal Court	Report
04/12/04	Jackson v. Ajax Boilers, Inc.	SD Superior	Deposition
04/08/04	Wickersham v. Manson Construction Co.	Federal Court	Deposition
04/07/04	Game World v. Olhausen Billiard Mfg.	Federal Court	Report
04/01/04	Mancinelli v. Siewak	SD Superior	Deposition
03/31/04	Barnes v. Connolly-Pacific Company	Federal Court	Report
03/29/04	Rodriguez v. Legacy Fishing Company	Federal Court	Deposition
03/29/04	Wickersham v. Manson Construction Co.	Federal Court	Report
03/05/04	Martinez v. Davis	El Centro Superior	Trial
01/23/04	Parades v. Star-Kist Foods, Inc.	Federal Court	Report
01/06/04	FMD Medikal v. Johnson & Johnson	Arbitration	Arbitration
11/12/03	Jones v. Bob Baker Ford	SD Superior	Trial
11/10/03	Geist v. Washington Mutual Bank	Arbitration	Arbitration
11/03/03	Geist v. Washington Mutual Bank	Arbitration	Deposition
10/27/03	In Re: Daewoo Motor of America	Bankruptcy Court	Trial
10/17/03	The Retirement Grp. v. LINSO/Private Ledger	SD Superior	Deposition
10/09/03	Jones v. Bob Baker Ford	SD Superior	Deposition
10/08/03	River Colony v. Bay View Financial Trading Co.	SD Superior	Deposition
10/03/03	Parades v. Star-Kist Foods, Inc.	Federal Court	Report
10/02/03	In Re: Daewoo Motor of America	Bankruptcy Court	Hearing
10/01/03	Stone v. Misoni	SD Superior	Trial
09/30/03	Morandarte v. Star-Kist Foods, Inc.	Federal Court	Report
09/25/03	FMD Medikal v. Johnson & Johnson	Arbitration	Deposition
09/22/03	In Re: Daewoo Motor of America	Bankruptcy Court	Deposition
09/12/03	Rodriquez v. Legacy Fishing Company	Federal Court	Report
09/11/03	In Re: Daewoo Motor of America	Bankruptcy Court	Report
09/04/03	Garcia v. Star-Kist Foods, Inc.	SD Superior	Report
09/04/03	Ross v. Richmond	SD Superior	Trial
08/27/03	Solari v. American Ship Management	Federal Court	Report
08/25/03	Stone v. Misoni	SD Superior	Deposition
08/18/03	O'Neill Farming v. Mutual Svc. Casualty Ins.	Fresno Superior	Deposition
07/23/03	Adams Design Grp. v. Innovative Resort Comm.	SD Superior	Deposition
07/07/03	Giles v. City of San Diego	SD Superior	Trial
06/19/03	Lyon v. Manson Construction Company	Federal Court	Report



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Date	Case Name	Venue	Testimony
06/12/03	Arreguin v. Texaco, Inc.	Federal Court	Report
06/02/03	Vuagniaux v. West Hampton Cove HOA	SD Superior	Deposition
05/30/03	McIntosh v. Curley	Orange County Superior	Deposition
05/29/03	Audiocare, Inc. v. Miracle Ear	SD Superior	Trial
05/05/03	Park v. Cytodyne Technology, Inc.	SD Superior	Trial
04/30/03	Giles v. City of San Diego	SD Superior	Deposition
04/29/03	Alves v. The Koorale	Federal Court	Report
04/10/03	Park v. Cytodyne Technology, Inc.	SD Superior	Trial
03/28/03	Salvino, Inc. v. MLBA, Inc.	Federal Court	Deposition
03/26/03	Rothmel v. Allstate Insurance Company	LA Superior	Trial
03/24/03	Father Joe's Villages v. Road One	Arbitration	Deposition
03/21/03	Park v. Cytodyne Technology, Inc.	SD Superior	Deposition
03/18/03	Rothmel v. Allstate Insurance Company	LA Superior	Trial
03/13/03	Arreguin v. Texaco, Inc.	Federal Court	Report
03/13/03	Audiocare, Inc. v. Miracle Ear	SD Superior	Deposition
02/27/03	Salvino, Inc. v. MLBA, Inc.	Federal Court	Report
02/20/03	Martinez v. Davis	El Centro Superior	Deposition
02/07/03	DeBrum v. M&F Fishing Company	Federal Court	Report
02/05/03	Navarro v. Bondex International, Inc.	SD Superior	Deposition
01/23/03	DeBrum v. M&F Fishing Company	Federal Court	Report
01/02/03	Rothmel v. Allstate Insurance Company	LA Superior	Deposition
12/20/02	Greenberg v. E.P. Management Services	LA Superior	Declaration
12/20/02	York v. Durmore Homes	Nevada Superior	Declaration
12/16/02	Battrich v. Prudential Overall Supply	Orange County Superior	Deposition
12/06/02	River Colony v. Bay View Financial Trading Co.	SD Superior	Report
12/02/02	Alves v. The Koorale	Federal Court	Declaration
11/20/02	Hoebeck v. Franks	SD Superior	Deposition
11/15/02	Molecular Probes v. TEF Labs	Federal Court	Report
10/30/02	Albany Travel Company v. Orbitz, LLC	Federal Court	Declaration
10/24/02	Anderson v. Atlas Turner, Inc.	SD Superior	Deposition
10/23/02	Rhoades v. Chevron Stations, Inc.	SD Superior	Deposition
10/18/02	Hendriksen v. Metabolife International	SD Superior	Deposition
08/28/02	Wotila v. Peak	SD Superior	Deposition
08/26/02	Centennial Insurance Co. v. Lee Roofing	SD Superior	Trial
08/15/02	Centennial Insurance Co. v. Lee Roofing	SD Superior	Deposition
07/23/02	Tuchscher Devel. v. Lennar Devel.	SD Superior	Deposition
07/23/02	Tuchscher Devel. v. Lennar Devel.	SD Superior	Trial
06/17/02	Aviation Upgrade v. The Boeing Company	Federal Court	Deposition
06/14/02	Medical Management Concepts v. Digirad	Federal Court	Deposition
06/07/02	Tuchscher Devel. v. Lennar Devel.	SD Superior	Deposition
05/28/02	Brauch v. Bondex International, Inc.	LA Superior	Deposition
05/15/02	Medical Management Concepts v. Digirad	Federal Court	Report
04/26/02	Dunnum, M.D. v. Eastman	Federal Court	Deposition



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Date	Case Name	Venue	Testimony
04/18/02	Hinkle v. Sky West Airlines	SD Superior	Trial
04/11/02	Daniels v. Century-National Insurance Co.	Arbitration	Arbitration
03/20/02	Bierlich v. Soco-Lynch Corporation	LA Superior	Trial
03/19/02	Canos v. CostCo	SD Superior	Deposition
03/07/02	Daniels v. Century-National Insurance Co.	Arbitration	Deposition
02/15/02	Dunnum, M.D. v. Eastman	Federal Court	Report
02/01/02	River Colony v. Chicago Title Insurance Co.	SD Superior	Deposition
01/14/02	Capstone Mortgage v. Sterling Bank & Trust	Maricopa Superior	Deposition



EXHIBIT C

Claypool v. Blue Dolphin Charters
Exhibit C – Documents Reviewed

The following is a summary of materials and information that I have obtained in connection with my continuing review and analysis:

1. Employment records from Prudential Insurance including Form W-2 for 2002 through 2005 and weekly Account Summary Statements April 2, 2004 through June 18, 2004 and April 1, 2005 through December 30, 2005.
2. Federal and Arizona income tax returns for Dennis and Cheryl Claypool, 1999-2004.
3. Employment records for Cheryl Claypool from Mesa Unified School District and Maricopa Community Colleges.
4. May 18, 2005 letter from Dr. Duncan.
5. Out of pocket expense receipts related to additional expenses for rental properties.
6. Out of pocket expense receipts related to household services.
7. Economic data compiled by the Bureau of Labor Statistics, Department of Health and Human Services, Federal Reserve Board, United States Census Bureau, Internal Revenue Service and other governmental agencies regarding life expectancy, worklife expectancy, wage growth, inflation, income taxes and interest rates.

In addition to this information, I have had telephone conversations with Mr. Dennis Claypool where he provided information to me.



EXHIBIT D

Claypool v. Blue Dolphin Charters
Summary of Potential Economic Loss in Present Value - With Advertising Campaign
Through Worldwide Expectancy
As of March 1, 2006

DRAFT

Loss of Earnings & Benefits	\$ 1,180,665
Offset Earnings & Benefits	(576,475)
Additional Rental Expenses	295,326
Future Care Costs	149,535
Loss of Household Services	153,096
Total Economic Loss	\$ 1,202,147
TOTAL POTENTIAL ECONOMIC LOSS	\$ 1,202,147

Analysis excludes:

Past out of pocket medical expenses.

Future time off work due to additional surgeries.

Any medical expenses for Mrs. Claypool.

Claypool v. Blue Dolphin Charters

**Summary of Potential Economic Loss in Present Value - Without Advertising Campaign
Through Worklife Expectancy**

As of March 1, 2006

DRAFT

Loss of Earnings & Benefits	\$ 888,968
Offset Earnings & Benefits	(576,475)
Additional Rental Expenses	295,326
Future Care Costs	149,535
Loss of Household Services	153,096
Total Economic Loss	\$ 910,450
TOTAL POTENTIAL ECONOMIC LOSS	<u><u>\$ 910,450</u></u>

Analysis excludes:

Past out of pocket medical expenses.

Future time off work due to additional surgeries.

Any medical expenses for Mrs. Claypool.

Claypool v. Blue Dolphin Charters

Census Data

DRAFT*Dennis Claypool*

		Date	Age	Years
Date of Birth	per Plaintiff	12/08/53		
Date of Incident	per Plaintiff	07/20/04	50.61	
Date of Valuation		03/01/06	52.23	1.62

		To Date	To Age	As of DOV
Statistical Life Expectancy		10/14/32	78.85	26.62
Full Functional Life Expectancy		11/23/29	75.96	23.73
Statistical Worklife Expectancy		07/24/18	64.62	12.39
Age 65		12/08/18	65.00	12.77
Age 70		12/08/23	70.00	17.77

Calculations:

Age		52.00	53.00	52.23
LE ¹	B1-1	26.80	26.00	26.62
FFLE ²	B2-2	23.89	23.21	23.73
WLE ³ - Richards (College)	B3-2	12.40	11.60	12.22
WLE ⁴ - Millimet (College)	B3-5	12.57	11.77	12.39
WLE ⁵ - Ciecka (College)	B3-6	12.74	11.94	12.56
Average WLE:				12.39

Sources:

¹ United States Life Tables, 2002, National Vital Statistics Reports, Vol. 53, No. 6, November 10, 2004.

² Life Tables Males & Females: United States, 2001, National Vital Statistics Reports, Vol. 52, No. 14, February 18, 2004.

Worklife expectancy based on males with a college education (Per Plaintiff).

³ Richards, Estimating Worklife Expectancies, By Sex, Race, Hispanic Origin, and Education, 1999.

⁴ Millimet, Estimating Worklife Expectancy: An Econometric Approach, By Gender and Education, 2001.

⁵ Gary Skoog & James Ciecka, "The Markov (Increment-Decrement) Model of Labor Force Activity," Journal of Legal Economics, vol. 11, no. 1, 2001.

Claypool v. Blue Dolphin Charters

Schedule IA: Loss of Earnings and Benefits - Prudential

Period	Years	Annual			401(k)			Total			DRAFT
		Taxable Earnings	Tax Rate	Annual Tax	Match	Annual Basis	NDR	Present Value			
07/20/04 - 01/01/05	0.00 - 0.45	\$ 78,654	24%	\$ (18,877)	\$ 4,555	\$ 64,332	3.31%	\$ 28,696			
01/01/05 - 01/01/06	0.45 - 1.45	79,867	22%	(17,571)	4,663	66,959	3.31%	64,803			
01/01/06 - 03/01/06	1.45 - 1.61	81,167	23%	(18,668)	4,773	67,272	3.31%	10,219			
03/01/06 - 07/07/09	1.61 - 4.96	81,167	23%	(18,668)	4,773	67,272	2.00%	206,514			
07/07/09 - 03/11/11	4.96 - 6.64	81,167	23%	(18,668)	4,773	67,272	2.00%	98,475			
03/11/11 - 07/24/18	6.64 - 14.01	81,167	24%	(19,480)	4,773	66,460	2.00%	390,222 WLE			
TOTAL NET PRESENT VALUE AS OF 07/20/04 THROUGH WLE										\$ 798,929	
Pre-Judgment Interest Calculation:											
07/20/04 - 03/01/06	0.00 - 1.61			\$ 798,929	7%			\$ 888,968			

Notes:

Discount rate from date of injury to date of valuation represents the average interest rate on a 5-year Treasury bond. Pre-judgment Interest statutory rate of 7%.

Incident occurred 7/20/04. At the time of the injury, plaintiff was employed as an insurance salesman for Prudential.

Net income at the time of the incident was \$78,654. Estimate 2005 net income of \$79,867 (IC).

Had a 3% employer 401(k) match at Prudential. Has not lost any other fringe benefits.

Employer matches 3% of gross earnings as reported on Form 1099. Gross earnings before expenses, for 2004 are \$151,842, gross earnings for 2005 are \$155,425 and gross earnings for 2006 are \$159,093 (IC).

Claypool v. Blue Dolphin Charters

Schedule IB: Loss of Earnings and Benefits - Prudential - With Advertising Campaign

DRAFT

Period	Years	Annual			401(k)			Total		
		Taxable Earnings	Tax Rate	Annual Tax	Match 3%	Basis	NDR	Annual Basis	NDR	Present Value
07/20/04 - 01/01/05	0.00 - 0.45	\$ 105,028	27%	\$ (28,357)	\$ 6,055	\$ 82,726	3.31%	\$ 36,900		
01/01/05 - 01/01/06	0.45 - 1.45	107,354	24%	(25,765)	6,198	87,787	3.31%			84,960
01/01/06 - 03/01/06	1.45 - 1.61	109,716	24%	(26,332)	6,344	89,728	3.31%			13,630
03/01/06 - 07/07/09	1.61 - 4.96	109,716	24%	(26,332)	6,344	89,728	2.00%			275,450
07/07/09 - 03/11/11	4.96 - 6.64	109,716	25%	(27,429)	6,344	88,631	2.00%			129,741
03/11/11 - 07/24/18	6.64 - 14.01	109,716	25%	(27,429)	6,344	88,631	2.00%			520,400 WLE
TOTAL NET PRESENT VALUE AS OF 07/20/04 THROUGH WLE										\$ 1,061,081
<hr/>										
Pre-Judgment Interest Calculation:										
07/20/04 - 03/01/06	0.00 - 1.61			\$ 1,061,081	7%					\$ 1,180,665
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Notes:

Discount rate from date of injury to date of valuation represents the average interest rate on a 5-year Treasury bond. Pre-Judgment Interest statutory rate of 7%.

Incident occurred 7/20/04. At the time of the injury, plaintiff was employed as an insurance salesman for Prudential.

Per plaintiff, at the time of the incident was in an advertising campaign to increase new business, that would likely increase commissions by \$40,000 - \$60,000/year.

Estimate 2004 net income of \$105,028, 2005 net income of \$107,354 and 2006 net income of \$109,716.

Had a 3% employer 401(k) match at Prudential. Has not lost any other fringe benefits.

Employer matches 3% of gross earnings as reported on Form 1099. Gross earnings, before expenses, for 2004 are \$201,842, gross earnings for 2005 are \$206,605 and gross earnings for 2006 are \$211,481.

Claypool v. Blue Dolphin Charters
Schedule IC: Loss of Earnings Support

DRAFT

	<u>Income</u>	<u>Year</u>	<u>Business Expenses</u>	<u>CPI-U</u>	<u>2004\$</u>
2003 - Prudential 1099	\$ 92,401	2000	\$ 49,062	172.2	\$ 53,820
2003 - Prudential W-2	<u>51,664</u>	2001	63,237	177.1	67,450
		2002	73,321	179.9	76,989
Total 2003	\$ 144,065	2003	72,991	184.0	74,935
ECI Finance, Insurance & Real Estate 2003-2004	1.83%	Annualized 2004	71,440 ³	188.9	<u>71,440</u>
			Average Business Expenses (2003-2004):		\$ 73,188
2003 in 2004\$	\$ 146,701		Fixed Expenses	75%	\$ 54,891
2004 - Prudential 1099	<u>156,982</u>		Variable Expenses	25%	18,297
Average 2003-2004	\$ 151,842		Variable % of Income		12.1%
Less: Expenses	<u>\$ (73,188)</u>				
Schedule C Net Income Basis:	<u>\$ 78,654</u>	2004\$			
2005 Income	\$ 155,425	2.36% ¹	2006 Income	\$ 159,093	2.36% ¹
Less: Fixed Expenses	(56,752)	3.39% ²	Less: Fixed Expenses	(58,676)	3.39% ²
Less: Variable Expenses	<u>(18,806)</u>	12.1%	Less: Variable Expenses	<u>(19,250)</u>	12.1%
Schedule C Net Income Basis:	<u>\$ 79,867</u>	2005\$		<u>\$ 81,167</u>	2006\$
After Advertising Campaign:					
	<u>2004</u>	<u>2005</u>	<u>2006</u>		
Income	\$ 201,842 ⁴	\$ 206,605	\$ 211,481 ¹		
Less: Fixed Expenses	(54,891)	(56,752)	(58,676) ²		
Less: Variable Expenses	(24,423)	(24,999)	(25,589) 12.1% of Income		
Less: Additional Advertising	<u>(17,500)</u> ⁵	<u>(17,500)</u>	<u>(17,500)</u> ⁵		
Loss Basis:	<u>\$ 105,028</u>	<u>\$ 107,354</u>	<u>\$ 109,716</u>		

¹ ECI Finance, Insurance & Real Estate Growth, 2004-2005 growth (B7-2)² CPI-U, 2004-2005 growth (B8-2)³ 2004 1099 earnings of \$86,340 through 7/20/04 (E7-6,7, E1-4), or \$156,982 annualized. Only annualize variable expenses.⁴ At the time of injury was in a campaign to increase new business. Would have resulted in an increase to him of \$40,000 - \$60,000 per year (TC Notes p. 2).⁵ Advertising campaign would cost \$15,000 - \$20,000 (TC Notes p. 2).

Claypool v. Blue Dolphin Charters
Schedule II: Additional Expenses - Rental Properties

DRAFT

Period	Years	Annual Expenses	NDR	Present Value
07/20/04 - 03/01/06	0.00 - 1.61	\$ 25,495	3.31%	\$ 24,174
03/01/06 - 11/23/29	1.61 - 25.34	15,000	3.00%	241,240
				\$ 265,414

TOTAL NET PRESENT VALUE AS OF 07/20/04**Pre-Judgment Interest Calculation:**

07/20/04 - 03/01/06	0.00 - 1.61	\$ 265,414	7%	\$ 295,326
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Notes:

Discount rate from date of injury to date of valuation represents the average interest rate on a 5-year Treasury bond. Pre-Judgment Interest statutory rate of 7%.

At the time of the injury, Plaintiff owned 3 rental properties. Due to his injury, he has been unable to do the normal maintenance and repairs that have occurred. He has had to hire other people to do these things that normally he would have done himself. He has also given rent-breaks to one of his tenants for helping with projects.

Plaintiff has totaled his past out of pocket expenses related to the rental properties and prepared a projection of future costs. Total expenses through date of valuation of \$25,495 (B11-0).

Plaintiff estimates annual expenses of \$15,000 going forward starting in 2006. Estimate begins date of valuation.

Plaintiff planned to keep the rental properties as long as possible. Estimate loss ends at his full functional life expectancy.

Claypool v. Blue Dolphin Charters

Schedule IIIA: Offset Earnings and Benefits

DRAFT

Period	Years	Annual Taxable Earnings	Tax Rate	Annual Tax	401(k) Match	3%	Total Annual Basis	NDR	Present Value
07/20/04 -	01/01/05	0.00 - 0.45							3.31%
01/01/05 -	02/11/05	0.45 - 0.56							3.31%
02/11/05 -	01/01/06	0.56 - 1.45	\$ 36,283	14%	(5,080)	\$ 2,943	\$ 34,146	3.31%	\$ 32,548
01/01/06 -	03/01/06	1.45 - 1.61	51,924	18%	(9,346)	3,775	46,353	3.31%	7,041
03/01/06 -	07/07/09	1.61 - 4.96	51,924	18%	(9,346)	3,775	46,353	2.00%	142,296
07/07/09 -	03/11/11	4.96 - 6.64	51,924	19%	(9,866)	3,775	45,833	2.00%	67,092
03/11/11 -	07/24/18	6.64 - 14.01	51,924	19%	(9,866)	3,775	45,833	2.00%	269,110
TOTAL NET PRESENT VALUE AS OF 07/20/04 THROUGH WLE									
							\$ 518,087		\$ 518,087

Pre-Judgment Interest Calculation:

07/20/04 -	03/01/06	0.00 - 1.61	518,087	7%	\$ 576,475
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Notes:

Discount rate from date of injury to date of valuation represents the average interest rate on a 5-year Treasury bond. Pre-Judgment Interest statutory rate of 7%.

Returned to work 2/11/05 after the injury, but Prudential has taken away his book of business. Is in the process of trying to get it back, does not know if he will. If he does not regain his book of business, will start over at \$0.

Through 12/31/05, gross earnings of \$98,094 (E11-12). Net income through 12/31/05 of \$36,283 after business expenses (see Schedule IIIB).

Estimate future earnings based on average weekly earnings in 2005 annualized (B10-3) of \$122,924 less fixed expenses of \$56,752 and variables expense of 12.1 percent of income, or \$14,874. Total 2005 net offset of \$51,298 (IIIB) increased to 2006\$ is \$51,924.

Had a 3% employer 401(k) match at Prudential. Has not lost any other fringe benefits. 401(k) match is based on gross earnings in 2005 of \$98,094 and \$125,825 in 2006.

¹ Present value not adjusted for time period, only discounted as a lump sum back to 7/20/04.

Pre-Incident: Prudential - No Advertising

	2005\$	2006\$	2005\$	2006\$
	Sch IC	Sch IC	Sch IC	Sch IC
Income	\$ 155,425	\$ 159,093	\$ 122,924	\$ 125,825
Fixed Costs	(56,752)	(58,676)	(56,752)	(58,676)
Variable Costs (12.1%)	(18,806)	(19,250)	(14,874)	(15,225)
Net Income	\$ 79,867	\$ 81,167	\$ 51,298	\$ 51,924

2/11/05-12/31/05

0.88 years

Actual Earnings \$ 98,094

Pro-Rated Fixed Costs (49,942)

Variable Costs (12.1%) (11,869)

Net Income \$ 36,283

**Claypool v. Blue Dolphin Charters****Schedule IV: Future Costs****DRAFT**

Period	Years	Monthly Cost	Annual Cost	NDR	Present Value
Future Needs - Surgery					
07/20/04 - 03/01/06	0.00 - 1.61			3.31%	
03/01/06 - 03/01/08	1.61 - 3.61	\$ 5,208	\$ 62,500	-1.00%	\$ 119,765
Future Needs - Follow-Up					
07/20/04 - 03/01/06	0.00 - 1.61			3.31%	
03/01/06 - 10/14/32	1.61 - 28.24	\$ 60	\$ 725	1.75%	\$ 14,624
TOTAL NET PRESENT VALUE AS OF 07/20/04					\$ 134,389

Pre-Judgment Interest Calculation:

07/20/04 - 03/01/06	0.00 - 1.61	134,389	7% \$ 149,535
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Notes:

Discount rate from date of injury to date of valuation represents the average interest rate on a 5-year Treasury bond.

Pre-Judgement Interest statutory rate of 7%.

Per Dr. Duncan, Mr. Claypool will require additional surgeries over the next 2 years (F1-1). The global expenses for all future treatments is \$125,000. He will also need 2-3 visits per year for follow-up for his injury. Estimate \$725 additional expenses per year (per Dr. Duncan's office).

Per plaintiff, has incurred \$1,000 in out of pocket medical expenses to date.



Claypool v. Blue Dolphin Charters

Schedule V: Loss of Household Services and Household Expenses

DRAFT

Period	Years	Description	Actual/Annual			Present Value
			Annual Cost	NDR		
Out of Pocket Expenses						
07/20/04 - 04/01/05	0.00 - 0.70			3.31%		
04/01/05 - 04/01/05	0.70 - 0.70	Salt System	\$ 2,000	3.31%	\$ 1,954	
07/20/04 - 05/01/05	0.00 - 0.78			3.31%		
05/01/05 - 05/01/05	0.78 - 0.78	Sprinklers	650	3.31%	<u>633</u>	
Subtotal Out of Pocket Expenses						\$ 2,587
Lawn and Pool Service						
07/20/04 - 03/01/06	0.00 - 1.61		\$ 2,650	3.31%	\$ 4,149	
03/01/06 - 11/23/29	1.61 - 25.34		2,650	3.00%	<u>42,619</u>	
Subtotal Lawn Services						\$ 46,768
Household Services						
07/20/04 - 01/01/05	0.00 - 0.45		\$ 4,815	3.31%	\$ 2,148	
01/01/05 - 01/01/06	0.45 - 1.45		4,910	3.31%	4,752	
01/01/06 - 03/01/06	1.45 - 1.61		5,010	3.31%	761	
03/01/06 - 11/23/29	1.61 - 25.34		5,010	3.00%	<u>80,574</u>	
Subtotal Household Services						\$ 88,235
TOTAL NET PRESENT VALUE AS OF 7/20/04						<u>\$ 137,590</u>

Pre-Judgment Interest Calculation:

07/20/04 - 03/01/06	0.00 - 1.61	137,590	7%	\$ 153,096
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Notes:

Discount rate from date of injury to date of valuation represents the average interest rate on a 5-year Treasury bond.

Pre-Judgement Interest statutory rate of 7%.

Per plaintiff, he has paid \$650 to have his sprinkler system repaired and \$2,000 to have a salt system installed in his pool to eliminate replacement cost for outside maintenance.

Since the injury, he has hired a lawn service at \$35 per week (50 weeks per year) and a pool service at \$75 per month (12 months per year). Total annual cost is \$2,650 ($(50 * \$35) + (12 * \$75)$)

He estimates he used to do 15-20 hours per week of household services. Use 10 hours per week, 50 weeks per year. 10 hours per week excludes lawn care as he now has a lawn service and a pool service (B11-43).

Year	Hourly Rate	10 Hrs/Wk	Annual
2004	\$ 9.63	\$ 96.30	\$ 4,815
2005	9.82	98.20	4,910
2006	10.02	100.20	5,010